EASEMENTS—EXPRESS GRANT.—In 1857, B., being the owner of a large lot conveyed a portion of it to certain named trustees of the Methodist Episcopal Church and "their successors in office forever, in trust for a house or place of worship," and covenanted with said trustees "and their successors that no building shall be erected on any part of the land surrounding the above described *church lot* within 10 feet of said *church lot.*" A few months afterwards B. conveyed the remaining portion of the lot, subject to the building restriction in favor of the church lot, to the predecessor in title of defendant. In 1911, services having been discontinued, the church with the lot on which it stood was conveyed to complainant, who converted the church into a business house, and thereupon defendant commenced to build over the 10 foot line. *Held,* that the building restriction was an easement appurtenant to the lot on which the church stood, and was not extinguished by the conversion of the church building into a business house. *Hennen* v. *Deveny,* (W. Va. 1913), 77 S. E. 142.

In interpreting the provisions in the deed of conveyance of the church lot in 1857 a majority of the court held the view that there was nothing in the deed to restrict the benefit of the easement to such time only as the lot was used for church purposes. Two justices however in a dissenting opinion took a contrary view, and pointed out that there were peculiar and special reasons for a vacant space around the church or place of worship, not applicable to business property, and that the insertion of the building restriction impliedly negatived an intent to subserve any other purpose. Also that when the conveyance of the church lot was made in 1857 a church had been newly built thereon and there was no mention of the word "assigns" in the deed of conveyance; all of which went to show that it was the intention of the grantor that the easement was to continue only so long as the dominant tenement was used for church purposes. The dissenting justices criticised—and it would appear rightly so—the cases quoted to support the majority opinion, for the reason that in none of them was there a change in the character of the dominant tenement as in the principal case. A case not quite analagous to the principal case, but involving, as in the principal case, the construction of an easement created by deed is *Allen* v. *Gomme,* 11 A. & E. 759. There, the defendant Gomme having by express reservation a right of way over the plaintiff's premises to a stable and loft on his own land and to a "space or opening under the said loft and then used as a woodhouse," converted the loft and the space thereunder into a cottage, and claimed the way as appurtenant to the cottage. The court held that the words "now used as a woodhouse" were used not merely to ascertain the dominant estate, but indicated that defendant was confined to the use of the way "to a place in the same predicament as it was at the time of making the deed," that is, to an "open space" etc. If one owning land sells part of it reserving a right of way over the part sold to "the meadow" beyond, a question may arise in interpreting the deed as to whether the right of way could be used only to and from a *meadow* as such, or whether it was the intention of the parties that the way could be used to and from that particular parcel of land whatever use it might be put to. In other words, the question

under such circumstances is whether the expression "the meadow" was used as indicative of the scope of the easement, or whether it indicated and marked out the dominant estate. It would appear then that in the principal case the constant use of the words "church lot" in the deed of conveyance, together with the reasons in the dissenting opinion, would make it reasonable to conclude that the building restriction was for the benefit of the church lot only as such.

EVIDENCE—ADMISSIBILITY OF MEMORANDUM.—The date of the occurence of a certain fire was in dispute, plaintiff contending that it took place on June 13, while defendant company claimed June 20 as the correct date. To maintain its version defendant introduced as a witness one of its telegraph operators who testified that he kept a record of the telegrams sent by him to the defendant; that he had no independent recollection as to the date of the fire referred to in a certain telegram; that notwithstanding his reference to the record he had no independent recollection, but that he could state the date because he knew it was in the record, and knew of his own knowledge that the telegrams were inserted in the record on the date under which they were entered. After this preliminary evidence the entire telegram, dated June 20, and containing other statements damaging to plaintiff's contention, was admitted in evidence. *Held,* that this admission in evidence of the entire telegram was erroneous. *Salo* v. *Duluth & I. R. R. Co.* (Minn. 1913), 140 N. W. 188.

Justice BROWN, in commenting on the trial court's view, made the following remarks: "The effect of the ruling under consideration was to place before the jury not only the date of the telegram, but also a statement in writing, made by the witness, the defendant's agent, of certain details of the crucial fact in issue, and purporting, moreover, to have been made before the litigation was commenced and in the absence of the plaintiff, and all this under the guise of showing the date of the transaction recorded. We cannot sustain such an application of the rule, whatever the true rule may be deemed to be." On this subject generally, and with particular reference to recorded past recollections, see *Shove* v. *Wiley,* 18 Pick. 558; *Acklen's Executors* v. *Hickman,* 63 Ala. 494; *Davis* v. *Field,* 56 Vt. 426; WIGMORE, EVIDENCE, §§ 734 et seq. In *Wright* v. *Wright,* 58 Kan. 525, the following is said: "The rule of many of the older cases was that a witness might refresh his memory, as to forgotten matter about which he was called upon to testify, by reference to a memorandum of the same made at the time or very soon thereafter; having done which, he might then testify; but in such case his testimony must be from memory and not from the memorandum. The liberalizing tendency of the courts has now enlarged the rule so as to include cases where the witness is still unable to testify from memory, after an examination of the memorandum but is able to identify such memorandum as made by himself, at or near the time of the transaction to which it relates, for the purpose of preserving a true account of it, and that he knows it to have been truly and correctly made. In such cases, he may give the contents of the memorandum as his own evidence." The instant case emphasizes the